

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)
)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
Debtor.)

**FIFTH INTERIM APPLICATION OF KROGER, GARDIS & REGAS, LLP FOR
COMPENSATION AND REIMBURSEMENT OF EXPENSES
AS SPECIAL COUNSEL TO CHAPTER 11 TRUSTEE**

Kroger, Gardis & Regas, LLP ("KGR"), as special counsel to James A. Knauer, the chapter 11 trustee appointed in this case ("Trustee") hereby makes its fifth interim application ("Application") for the allowance and payment of its fees incurred as special counsel to the Trustee and for reimbursement of out-of-pocket expenses advanced by KGR. In support of this Application, KGR states as follows:

1. Petitioning creditors commenced the above-captioned Chapter 11 case ("Chapter 11 Case") against Debtor on December 6, 2010 ("Petition Date") by filing an involuntary petition for relief under Chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. ("Bankruptcy Code"). This Court entered its *Order For Relief In An Involuntary Case And Order To Complete Filing* on December 28, 2010 (ECF No. 110).

2. On December 27, 2010, the Court entered its *Order Approving The Appointment Of James A. Knauer As Chapter 11 Trustee* (ECF No. 102), ("Trustee Order"), approving the United States Trustee's *Notice Of Appointment And Application for Order Approving Appointment of Trustee* (ECF No. 98) pursuant to 11 U.S.C. § 1104.

3. On February 12, 2012, the Trustee filed his *Application to Employ Kroger, Gardis & Regas, LLP as Special Counsel to the Trustee*, and attached a proposed letter agreement ("Fee Letter Agreement") detailing fees under which KGR would serve as the Trustee's special counsel.

4. Following Notice, the Court entered its *Order Granting Application to Employ Kroger, Gardis & Regas, LLP as Special Counsel to the Trustee* on March 13, 2012, pursuant to the terms of the Fee Letter Agreement attached to the Application.

5. Following the entry of the Court's Order, KGR has acted as special counsel to the Trustee in the investigation of various claims on behalf of the Debtor's bankruptcy estate, and has pursued avoidance actions, promissory note collection cases, and foreclosure actions on behalf of the Trustee and the estate.

6. This Application is the fifth interim application filed by KGR seeking compensation for actual, necessary services rendered by KGR on behalf of the Trustee and reimbursement of out-of-pocket expenses advanced by KGR on behalf of the Trustee for the period from May 1, 2014 through and including October 31, 2014.

7. KGR has performed a variety of services on behalf of the Trustee, all of which are described in detail in the billing statements attached as **Exhibit A**.

8. The Fee Letter Agreement between the Trustee and KGR sets forth a fee arrangement whereby:

(a) KGR's attorneys would charge an hourly rate of \$175.00 per hour (well below KGR's normal rates in matters such as these);

(b) KGR would also be entitled to seek the greater of its hourly rate or a contingent fee of 25% (less its hourly rate) in the event of any recovery, provided

that the contingency fee, as to any individual matter, does not exceed 2 1/2 times KGR's standard hourly rates.

9. **Exhibit A** provides the detail of the time for each attorney and paralegal in each case being handled by KGR, as well as time expended in the general litigation of these matters. **Exhibit B** provides a summary worksheet of the time in each of these cases. A summary of the fees requested by KGR, including the number of hours worked, the billing rate requested and the total fees claimed, is set forth below:

Attorney	Rate	Hours	Value
Jay P. Kennedy	\$175.00	120.6	\$21,105.00
Jennifer L. Watt	\$175.00	141.70	\$24,797.50
Amanda D. Stafford	\$175.00	462.70	\$80,972.50
Steve E. Runyan	\$175.00	141.60	\$24,780.00
James G. Lauck	\$175.00	27.30	\$4,777.50
Harley K. Means	\$175.00	5.30	\$927.50
Tammy J. Froelich (paralegal)	\$125.00	13.10	\$1,637.50
Carole L. King (paralegal)	\$125.00	9.20	\$1,150.00
Total		921.50	\$160,147.50

10. KGR has advanced the sum of \$1,621.93 for out-of-pocket expenses incurred in connection with this case during the period from May 1, 2014 through and including October 31, 2014. A summary of the out-of-pocket expenses incurred by the Trustee is set forth at **Exhibit C**.

11. In addition to the above set forth fees and expenses, KGR makes application for an award of contingent fees pursuant to the Fee Letter Agreement. Specifically, in addition to the discounted hourly fees, KGR is entitled to apply for a further award, if applicable, of up to twenty-five percent (25%) of any recoveries less its discounted hourly fees. KGR has submitted the following Settlement Agreements to the Court for approval, and has collected on or before October 31, 2014, and turned over to the Trustee, the amounts shown below:

Case Name	Recovery	Contingency Fee Award, If Applicable
Amos Kropf	\$50,000.00	
Bradbury & York, et al.	\$15,000.00	
Brandon Zeisler	\$17,500.00	\$297.50
Chad Schuchmann	\$100,000.00	\$12,277.50
Cornelison Farms, FLP	\$20,000.00	\$1,360.00
Fort Payne Stock Yard, Inc.	\$20,000.00	
Kevin Manthey	\$12,000.00	
PBI Bank	\$3,000.00	
Randy Hoover & Sons, et al.	\$10,000.00	
TOTAL:	\$247,500.00	\$13,935.00

The chart attached hereto as **Exhibit D** details the calculation of the contingency fees.

The contingency fees are subject to a cap of 2 1/2 times KGR's standard rates. None of the contingency fees set forth above were applicable to the cap. KGR therefore seeks, in addition to its hourly fees detailed above, an award of a contingent fee in the sum of \$13,935.00.

12. This Application is the fifth application of KGR for interim compensation. Previously the Court has awarded compensation and reimbursement of expenses to KGR as follows:

(a) Pursuant to the *Order Granting First Interim Application of Kroger, Gardis & Regas, LLP for Compensation and Reimbursement of Expenses as Special Counsel to Chapter 11 Trustee* (ECF No. 1650) ("First Interim Compensation Order"), the Court approved KGR's hourly fees and expenses incurred, and contingent fees

earned, for the period February 21, 2012 through and including October 31, 2012, in the amounts of \$45,287.50, \$670.61 and \$8,804.65 respectively. KGR has been paid \$54,762.80 on account of the fees and expenses approved by the First Interim Compensation Order.

(b) Pursuant to the *Order Granting Second Interim Application of Kroger, Gardis & Regas, LLP for Compensation and Reimbursement of Expenses as Special Counsel to Chapter 11 Trustee* (ECF No. 2346) ("Second Interim Compensation Order"), the Court approved KGR's hourly fees and expenses incurred for the period November 1, 2012 through and including February 28, 2013 in the amounts of \$167,927.50 and \$1,833.89 respectively. KGR has been paid \$136,175.89 on account of the fees and expenses approved by the Second Interim Compensation Order.

(c) Pursuant to the *Order Granting Third Interim Application of Kroger, Gardis & Regas, LLP for Compensation and Reimbursement of Expenses as Special Counsel to Chapter 11 Trustee* (ECF No. 2422) ("Third Interim Compensation Order"), the Court approved KGR's hourly fees and expenses incurred for the period March 1, 2013 through and including August 31, 2013 in the amounts of \$246,132.50 (Fees) and \$1,919.43 (Expenses) and the contingent fee award of \$73,756.26, totaling \$321,808.19. KGR has been paid \$257,830.44 on account of the fees and expenses approved by the Third Interim Compensation Order.

(d) Pursuant to the *Order Granting Fourth Interim Application of Kroger, Gardis & Regas, LLP for Compensation and Reimbursement of Expenses as Special Counsel to Chapter 11 Trustee* (ECF No. 2616) ("Fourth Interim Compensation Order"), the Court approved KGR's hourly fees and expenses incurred for the period

September 1, 2013 through and including April 30, 2014 in the amounts of \$214,612.50 (Fees) and \$3,639.71 (Expenses). KGR has been paid \$175,329.71 on account of the fees and expenses approved by the Fourth Interim Compensation Order.

13. No agreement or understanding exists between KGR and any other person or entity for the sharing of compensation received for services rendered in connection with this case.

14. All services rendered and all expenses incurred for which compensation or reimbursement is sought have been rendered or incurred exclusively by KGR and represent necessary and proper services rendered in the administration of this Chapter 11 Case.

15. Consistent with the Fourth Interim Compensation Order, KGR' seeks authority and approval from the Court for an order authorizing the Trustee to pay 80% of the fees and 100% of the expenses from the Trustee's operating account to KGR, subject to available funds, with payment of the remaining 20% of the fees to be made upon further order of the Court approving the final fee application filed by or on behalf of KGR.

16. KGR acknowledges that any interim award of fees granted to it pursuant to this Application is an interim award of fees and subject to final review as part of the final fee application to be submitted in this case.

WHEREFORE, Kroger, Gardis & Regas, LLP requests (i) the Court award compensation to KGR on account of its actual and necessary hourly fees in the amount of \$160,147.50; (ii) the Court order reimbursement for out-of-pocket expenses incurred in the amount of \$1,621.93; (iii) the Court award a contingent fee to KGR as described

above in the amount of \$13,935.00, totaling \$175,704.43; and (iv) grant KGR all other just and proper relief.

Respectfully submitted,

KROGER, GARDIS & REGAS, LLP

/s/ Jay P. Kennedy

Jay P. Kennedy, special counsel for
James A. Knauer, Trustee

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CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2014, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on November 7, 2014, a copy of the foregoing pleading was

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